No. 89-325

In the Supreme Court of the United States

October Term, 1989

ANDREW P. DZINGLSKI,
Petitioner,

v.

WEIRTON STEEL CORPORATION, and RETIREMENT COMMITTEE OF WEIRTON STEEL CORPORATION RETIREMENT PLAN,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The opinion of the Fourth Circuit is reported at 875 F.2d 1075 (4th Cir. 1989) and also appears in Petitioner's Appendix ("App.") at 1a-13a. The District Court's opinion appears in the Appendix at 14a-21a. The basis of this Court's jurisdiction and the pertinent statutory provision are set forth at pp. 2-4 of the *certiorari* petition (hereinafter "Pet.") in this case and therefore are not repeated here.

COUNTERSTATEMENT OF THE CASE

Petitioner's Statement of the Case, Pet. at 5, has the virtue of brevity, but at the expense of an accurate recitation of the underlying facts. Respondents herewith set forth a complete summary of the relevant facts.

Petitioner Andrew P. Dzinglski ("Dzinglski") was discharged for cause by Respondent Weirton Steel Corporation ("Weirton") on October 31, 1984. App. 2a. At the time of his discharge, Dzinglski was 46 years old and had been employed at Weirton for some 25 years. App. 15a. Weirton sponsors a defined benefit pension plan which features several options for early retirement. The plan is administered by Respondent Retirement Committee of Weirton Steel Corporation Retirement Plan ("Retirement Committee"). At issue in this litigation is the Rule-of-65 option, which provides eligible employees with an actuarially unreduced regular monthly pension benefit and, in addition, a $400 monthly supplemental payment. The $400 monthly supplemental payment is paid until the participant reaches age 62. Eligibility for the Rule-of-65 pension is conditioned on attainment of minimum age and years of service and the occurrence of one of several contingencies. The relevant contingency here is known as the

"mutual" provision and is set forth in the following excerpt from the plan:

> Any participant (i) who shall have had at least 20 years of Service as of his last day worked, (ii) who has not attained the age of 55 years, and (iii) whose combined age and years of Service shall equal 65 or more but less than 80, and
>
> * * * *
>
> (e) in the case of a Participant who is an Hourly Employee or a Salaried Employee—who considers that it would be in his interest to retire, and Weirton considers that such retirement would likewise be in its interest and it approves an application for retirement under mutually satisfactory conditions . . . shall be eligible to retire and shall upon his retirement on or after the Effective Date (hereinafter "rule-of-65 retirement") be eligible for a pension . . .

See App. 3a-4a & n.1.

Dzinglski applied for Rule-of-65 pension benefits on October 31, 1984—the same day he was discharged. He met the age and service requirements, but lacked the necessary approval by Weirton, which having discharged him for cause did not view his retirement as being in its interest. The Retirement Committee informed Dzinglski of his ineligibility for benefits by letter dated November 5, 1984, noting expressly therein that "Company [Weirton's] approval for such benefits has not been granted." App.4a. Dzinglski appealed this denial and was granted a hearing before the Retirement Committee, after which, by letter of April 12, 1985, the original decision of the Committee was affirmed for the reasons set forth in the November 5, 1984 letter. App. 4a.

Dzinglski thereupon filed suit in the United States District Court for the Northern District of West Virginia alleging, *inter alia*, that the Retirement Committee's failure to inform him of the specific reasons for Weirton's refusal to accede to his request for pension violated ERISA.

Both the District Court and the Court of Appeals concluded that Dzinglski failed to state a claim for violation of ERISA, 29 U.S.C. Sec. 1133. Both courts recognized the distinct capacities in which Weirton and the Retirement Committee functioned. Weirton, acting as Dzinglski's employer, had discharged him. Weirton, acting as his employer, refused to agree to his request for a rule-of-65 retirement benefit under the "mutual" provisions of the Plan. The Retirement Committee, acting as the plan fiduciary, applied the non-discretionary plan language to determine Dzinglski's ineligibility for pension due to the absence of Weirton's mutual assent. Based on these distinct roles, the courts below determined that Weirton did not act as a fiduciary with respect to the plan when it discharged Dzinglski and refused to consent to his request for a "mutual" rule-of-65 retirement benefit. Those courts also held that the Retirement Committee comported with both ERISA and the plan documents by basing its decision to deny benefits on the absence of Weirton's consent. *See* App. 6a-7a, 17a. Dzinglski now petitions for review by this Court of these determinations.

REASONS FOR DENIAL OF THE WRIT

Dzinglski has presented no reason for this Court to exercise discretion to review the decision of the Fourth Circuit Court of Appeals. His dire characterization of the decisions below, Pet. at 6, ignores and mischaracterizes the

terms of the pension plan, and the governing law. None of the relevant factors set forth in Supreme Court Rule 17 are presented by the instant petition. It should be denied.

A. There Is No Conflict Among Decisions of the Circuit Courts With Respect to the Issues Raised In the Petition

The Courts of Appeals are unanimous in their recognition that an employer may make personnel decisions free from the fiduciary responsibility attendant to its status as plan sponsor and its activities with respect to administration of a pension plan. *See, e.g., Hlinka v. Bethlehem Steel Corp.*, 863 F.2d 279, 283 (3rd Cir. 1988); *Hickman v. Tosco Corp.*, 840 F.2d 564, 567 (8th Cir. 1988); *Trenton v. Scott Paper Co.*, 832 F.2d 806, 809 (3d Cir. 1987), *cert. denied*, U.S. , 108 S.Ct. 1576 (1988); *Phillips v. Amoco Oil Corp.*, 799 F.2d 1464, 1471 (11th Cir. 1986), *cert. denied*, 481 U.S. 1016, (1987); *Amato v. Western Union Int'l.*, 773 F.2d 1402, 1416-17 (2d Cir. 1985), *cert. dismissed*, 474 U.S. 1113 (1986); *Ogden v. Michigan Bell Tel. Co.*, 657 F.Supp. 328, 335 (E.D. Mich. 1987), *aff'd in relevant part and rev'd in part sub nom, Berlin v. Michigan Bell Tel. Co.*, 858 F.2d 1154 (6th Cir. 1988); *Moehle v. NL Indus. Inc.*, 646 F.Supp. 769, 779 (E.D.Mo. 1986), *aff'd*, 845 F.2d 1027 (8th Cir. 1987).

It is also well settled that a plan fiduciary may not disregard the terms of the plan it administers, and must effect its administration in strict compliance with those terms. *See, e.g.*, 29 U.S.C. Sec. 1104(1)(D); *Hickman*, 840 F.2d at 566; *Moehle*, 646 F.Supp. at 777; *Foltz v. U.S. News & World Report*, 613 F.Supp. 634, 639 (D.D.C. 1985), *aff'd*, 865 F.2d 364 (D.C.Cir. 1989).

Here, the courts below found that Weirton as employer owed no fiduciary duty to Dzinglski when determining to discharge him and refusing to agree to grant him lucrative early retirement benefits. They also determined that the Retirement Committee, in its capacity as plan fiduciary, was not vested with discretion to alter Weirton's decision. Dzinglski does not challenge these findings. *See* Pet. at i. Based upon these predicate findings, the Court of Appeals found that the explanation for the denial of benefits given Dzinglski by the Retirement Committee "is not to be judged in a vacuum but under the terms of the plan." App. at 7a. Accordingly, the Fourth Circuit ruled that the denial of benefits complied with the strictures of ERISA and the plan itself and that the explanation given Dzinglski was sufficient. This decision fully comports with this Court's decision in *Bruch v. Firestone Tire & Rubber Co.*, U.S. , 109 S.Ct. 948 (1989).

Quite obviously, challenges to benefit eligibility determinations by ERISA fiduciaries turn on considerations of the plan language and the factual circumstances of the plan participant. *See Bruch*, 109 S.Ct. at 954. Review of those determinations is similarly circumscribed. Where the fiduciary is vested with discretion, a recitation of the rationale for denial of benefits is required. *See, e.g., Brown v. Retirement Committee of Briggs & Stratton*, 797 F.2d 521, 532-33 (7th Cir. 1986); *Short v. Central States, S.E. & S.W. Areas Pension Fund*, 729 F.2d 567, 574-75 (8th Cir. 1984). But where, as here, the fiduciary has no discretion in determining eligibility for benefits, a simple explication of ineligibility, with reference to that portion of the plan's language mandating the conclusion, is sufficient. *See* 29 CFR Sec.2560.503-1(h)(3) ("The decision on review shall be in

writing and shall include specific reasons for the decision . . . as well as specific references to the pertinent plan provisions on which the decision is based.") This is precisely the form in which the Retirement Committee's communications to Dzinglski were presented. App. 6a-7a.

In this respect, Dzinglski's statement that the Retirement Committee's failure to disclose Weirton's reasons for refusing to agree to his retirement "renders the appeals procedure an empty right and futile", Pet. at 6, simply misperceives the role of the Retirement Committee in the benefit process. Even had Dzinglski been fully apprised of Weirton's reasons, the Retirement Committee was powerless to question those reasons or to award benefits in the face of Weirton's refusal to approve his application. See App. 8a-10a. Nothing in ERISA as enacted during the relevant period prohibited the plan from being structured in this fashion. *Hlinka*, 863 F.2d at 283. Dzinglski makes no allegation that the plan was administered in bad faith or contrary to prior practice. *Cf. Fielding v. International Harvester Co.*, 815 F.2d 1254, 1257 (9th Cir. 1987). In short, he has failed to demonstrate how the perceived procedural defect he challenges with the instant petition requires any different result than that reached by the courts below. This alone is sufficient grounds to deny the petition.

B. No Important Questions Of Federal Law Are Presented By The Issues Raised in the Petition

Dzinglski urges that his petition raises "substantial issues" with respect to the proper functioning of the internal review mechanisms of ERISA plans required by 29 U.S.C. Sec.1133. Pet. at 8. However, he identifies no issues other than those presented by his own circumstances, and with respect to these does not challenge the lower courts'

conclusions that Weirton owed him no fiduciary duty and that the Retirement Committee had no discretion to award benefits absent Weirton's assent. There are thus no important federal questions raised by his circumstances.

Moreover, given recent amendments to the Internal Revenue Code, Dzinglski's circumstances are unlikely to be repeated. The Tax Reform Act of 1986, P.L. 99-514, 100 Stat. 2085 (1986) (codified in scattered sections of 26 U.S.C.) and regulations promulgated thereunder greatly limit the exercise of employer discretion after January 1, 1989 in the operation of tax-qualified pension plans. Regulations promulgated under amended IRC Sec.411 (d)(6) now state that "a plan that permits the employer, either directly or indirectly, through the exercise of discretion, to deny a participant a section 411(d)(6) protected benefit provided under the plan for which the participant is otherwise eligible (but for the employer's exercise of discretion) violates the requirements of section 411(d)(6)." Treas. Reg. Sec.1.411(d)(4)-4 Q & A 4 (1988). See *Hlinka*, 863 F.2d at 283 n.5. Accordingly, since Dzinglski's circumstances are unlikely to be repeated, there is no important question of federal law presented in the Petition.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

By C. H. Hellerstedt, Jr.

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CERTIFICATE OF SERVICE

I, Carl H. Hellerstedt, Jr., do hereby state that I served a true and correct copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI by U.S. Mail, First Class, Postage Prepaid, on the 20th day of Sept., 1989, addressed to the following:

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